IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2007

CORAM

THE HON'BLE MR. JUSTICE **S.MANIKUMAR**

W.P.No.20596 of 2006 (T)

(O.A.No.1141/1994)

U.Michael ... Petitioner

vs

1.The District Collector,
Pudukottai.

2.The Director of Rural Development,
Kuralagam, Madras - 108. ... Respondents

This Writ petition came to be numbered by transfer of O.A. No.1141 of 1994 from the file of the Tamil Nadu Administrative Tribunal praying for the issuance of a Writ of mandamus to direct the respondents to include the name of the petitioner in the panel of Rural Welfare Officers Grade-I/Assistant/Accountants fit for promotion as Extension Officers for the year 1994 without taking into account the punishment of stoppage of increment for a period of one year with cumulative effect imposed on the petitioner on 5.5.1993 and according to the seniority of the petitioner in the feeder category of Rural Welfare Officers Grade/I/Assistant/accountant.

For Petitioner ... Mrs.P.Jayanthi for Mr.S.Vadivelu

For Respondents ... Mrs.Lita Srinivasan,G.A.

ORDER

The petitioner has sought for a Writ of Mandamus to direct the respondents to include his name in the panel of Rural Welfare Officers Grade-I/Assistant/ Accountants fit for promotion as

Extension Officers for the year 1994 without taking into account the punishment of stoppage of increment for a period of one year with cumulative effect imposed on the petitioner on 5.5.1993 and according to his seniority in the feeder category of Rural Welfare Officers Grade-I/Assistant/ Accountant.

2. It is the case of the petitioner that he entered the Rural Development Department in the year 1970 as Typist. Thereafter, he opted for conversion to the post of Junior Assistant, from 06.11.1982. He was promoted as Assistant on 21.05.1985. The post of Assistant is equivalent to that of Rural Welfare Officer, Grade-I. The District Collector, Pudukottai District, the first respondent herein, by letter dated 18.01.1994, called for the details of Rural Welfare Officers Grade-I/ Assistant/Accountants for preparation of a panel of Extension Officers for the year 1994. The petitioner was placed at S.No.230 in the seniority list of Rural Welfare Officers Grade-I/ Assistant/Accountants. Upto Sl.No.222, the persons in the panel were acting as Extension Officers and the petitioner was due for promotion. As he was inflicted with a penalty of stoppage of increment for the year, by the District Collector, vide order dated 5.5.1993, he was not considered for promotion. The petitioner preferred an appeal against the penalty, before the Director of Rural Development, Madras and since no orders were passed, the petitioner was constrained to file the above Original Application for the relief as stated supra.

3. The respondents have filed their counter affidavit and contended that persons included in the panel upto 222, in the seniority list of Rural Welfare Officers Grade-I/ Assistant/Accountants were acting as Extension Officers and for the rest of the persons below seniority No.222, a fresh panel of Extension Officers for the year 1994 was to be prepared, taking into consideration of their eligibility, as on 1.3.1994.

4. The respondents have further submitted that the punishment of stoppage of increment awarded by the District Collector,in his proceedings dated 5.5.1993 was not set aside or cancelled and therefore the petitioner's name could not be considered.

5. Referring to rule 8(iii) of the Tamil Nadu Civil Service classification, Control and Appeal Rules, learned counsel for the petitioner submitted that there can be either withholding of increment or withholding of promotion, for the alleged misconduct and if promotion is withheld on the basis of the punishment stoppage of increment, then it is contrary to the Rule 8(iii) of the above said rules and i amounts to double penalty.

6. Learned counsel for the petitioner further submitted that as

punishment imposed on the petitioner was only a minor, the same cannot be put against the petitioner as a a bar for inclusion in the panel for higher post. In this regard, she relied on a decision of the Tamil Nadu Administrative Tribunal, in O.A.No.4281 of 1991 dated 1.4.1992, wherein, the Tribunal has observed as follows:

> *"... As pointed out by the learned counsel for the applicant under rule 8(iii) of the CCA rules, a Government servant for proved charges, can either be punished with a penalty of stoppage of increment or withholding of promotion. Both cannot be imposed for the same delinquency. Since the punishment of stoppage of increment have been imposed, the applicant cannot be debarred from being considered for promotion. ..."*

Learned counsel for the petitioner produced yet another copy of the order made in O.A.No.5069 of 1993, dated 17.11.1993 where the Tribunal has expressed the same view.

7. Relying on the decision of the Supreme Court in **Shiv Kumar Sharma Vs. Haryana State Electricity Board, Chandigarh and others** reported in **1988 (Supp) SCC-669**, learned counsel for the petitioner submitted that for the same act of misconduct, the petitioner should not be imposed with a punishment of stoppage of increment and overlooking his case for promotion is arbitrary and unjustified. In paragraph 6 of the above said judgment, it is held as follows:

> *"6. We are unable to accept the above contention. The penalty was imposed on April 15, 1968 and, as a result of which, he was deprived of the monetary benefit of one increment for one year only. The penalty by way of stoppage of one increment for one year was without any future effect. In other words, the appellant's increment for one year was stopped and such stoppage of increment will have no effect whatsoever on his seniority. Accordingly, the Board acted illegally and most arbitrarily in placing the juniors of the appellant above him in the seniority list and/or confirming the appellant in the post with effect from December 1, 1969, that is, long after the date of confirmation of the said Respondents 2 to 19. The question of seniority has nothing to do with the penalty that was imposed upon the appellant. It is apparent that for the same act of misconduct, the appellant has been punished twice, that is, first, by the stoppage of one increment for one year and, second, by placing him below his juniors in the seniority list."*

8. Per contra, Mrs. Lita Srinivasan, learned counsel for the respondent also relied on the decision of **L.Rajaiah Vs. Inspector**

General of Registration and Stamps, Hyderabad and others reported in **1996(8) SCC-246** submitted that the penalty of stoppage of increment can be considered for denying the promotion to higher posts, the Supreme Court has held that even though the penalty imposed on the appellant therein was that of stoppage of increment and not that of withholding of promotion, currency of the former penalty, would disentitle him to be considered for promotion.

9. Learned counsel for the respondent further submitted that as the post of Extension Officer post is a selection post, the promotion has to be made only on the basis of merit and ability, under the Special Rules.

10. Heard the learned counsel appearing for the parties and perused the materials available on record.

11. Admittedly, the petitioner has been inflicted with a penalty of stoppage of increment by order dated 5.5.1993 by the District Collector/the first respondent herein, for one year with cumulative effect. The penalty will be valid for a period of one year. The crucial date fixed for preparation of the panel of Extension Officers for the year 1994 is 1.3.1994 on which date, there was currency of punishment.

12. Withholding of penalty due to currency of penalty of stoppage of increment does not amount to double jeopardy and such an argument is untenable. When the petitioner was having a currency of penalty, on the crucial date i.e. as on 1.3.1994, he has no legal right to insist that his name should be included in the panel of Extension Officer, being a selection post notwithstanding the penalty.

13. In view of the above, the prayer to include the name of the petitioner in the panel of Extension Officers for the year 1994 without taking into consideration of stoppage of increment is wholly misconceived. It is always open to the respondents to consider the pendency of any disciplinary proceedings under 17(b) of the Tamil Nadu Civil Services (Classification, Control & Appeal) Rules or penalty whenever a panel is prepared, particularly for the selection post.

14. In view of the above,the petitioner is not entitled to the

relief sought for in this writ petition. Therefore, the writ petition is dismissed. No costs.

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar

rj

To

1.The District Collector,
Pudukottai.

2.The Director of Rural Development,
Kuralagam, Madras - 108.

+1 cc to Mr.S.Vadivelu Advocate, SR.No.54092

W.P.No.20596 of 2006

DM(CO)
BK(20/10/2008)